*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.6877 of 2005

%16-3-2006

The Kothota Marine Fishermen Cooperative Society, Kothota

...PETITIONER

Vs.

$ Director of Fisheries, A.P., Hyderabad and others

...RESPONDENTS

! COUNSEL FOR PETITIONER: Sri K.Chidambaram

^COUNSEL FOR RESPONDENTS 1 to 4: Government Pleader for Fisheries

^ COUNSEL FOR RESPONDENT No.5: Sri N.S.Bhaskara Rao

<GIST

>HEAD NOTE:

? CASES REFERRED:

1. 2000 (4) ALT 1 (DB)
2. 2000 (4) ALT 678
3. AIR 1991 AP 343

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6877 OF 2005

16.3.2006

Between:

The Kothota Marine Fishermen Cooperative Society, Kothota

… Petitioner

AND

Director of Fisheries, A.P., Hyderabad and others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6877 OF 2005

ORDER:

Kothota Marine Fishermen Cooperative Society (hereafter called, the Society) is the petitioner. The writ petition is filed seeking a writ of Mandamus declaring the inaction of the respondents 1 to 4 in not restraining the fifth respondent in disposing of the fishing rights in irrigation channels/drains connecting Upputeru passing through Kothota Village of Mogalthur Mandal in West Godavari District as illegal and arbitrary. The petitioner also seeks consequential direction to respondents 1 to 4 to lease out the said irrigation channels in favour of the petitioner Society duly restraining fifth respondent in disposing of the fishing rights in the channels.

The irrigation channel known as Upputeru drains out Kolleru lake into Bay of Bengal. Upputeru branches out Bonteru drain, Jaggappa drain, Komatithippa drain, Etimondi, Perlacheruvu, Vedithippa cheruvu, Kothota Ramalayam cheruvu, Komatithippa cheruvu etc. The branch channels are passing through Kothota Gram Panchayat, fifth respondent herein. The Government issued orders in G.O.Ms.No.776, dated 31.12.1990, transferring the control of fishing rights in inland fisheries to the Department of Fisheries. Though the Gram Panchayat, constituted under A.P.Panchayat Raj Act, 1994 (the Act, for brevity), has powers under Section 56 of the Act to lease out fishing rights in tanks vested in it, under Section 80 of the Act, Gram Panchayat has no powers to lease out irrigation channels (inland fisheries) to anybody. Under the said Government Order, it is only the Department of Fisheries, which has to lease out by giving preference to duly registered fishermen cooperative societies. The petitioner alleges that the fifth respondent has been leasing out the fishing rights in inland fisheries. Aggrieved by the same, the petitioner made a representation to respondents 3 and 4, where upon, the third respondent by letter, dated 25.06.2004, requested the second respondent to address the District Panchayat Officer, West Godavari, to issue suitable instructions to Gram Panchayats not to lease out fishing rights in irrigation channels and drains within thirty-two (32) kilometers of Upputeru. No action, however, was taken. But, the third respondent addressed a letter to the Panchayat Secretary of the fifth respondent informing that the fishing rights in irrigation channels and drains may not be disposed of by the Gram Panchayat. In spite of the same, the Gram Panchayat is still disposing of the fishing rights without any authority, and hence the writ petition.

The writ petition was admitted on 31.03.2005. After service of notice, respondents 1 to 4 entered appearance and fifth respondent also engaged another counsel. Respondents 1 to 4 filed counter affidavit on 28.06.2005 itself. When the matter was listed before this Court on 23.02.2006, the counsel for the fifth respondent and the learned Assistant Government Pleader for Fisheries were absent. Therefore, the matter was adjourned. Again on 03.03.2006, the counsel for the fifth respondent was absent but having regard to the controversy being in a narrow compass, the matter was heard finally and to enable the learned Government Pleader to get the instructions regarding the latest position, the matter was directed to be posted for Judgment. On 07.03.2006, Mr.N.Bhaskara Rao, the learned counsel appeared for the fifth respondent and requested time for filing counter. As repeatedly the matter was adjourned for the said purpose, as a last chance time was granted on payment of costs of Rs.500/-. On 14.03.2006, the counsel for the fifth respondent did not file counter but as the counsel for the petitioner was absent, the matter was adjourned to 16.03.2006. Again on 16.03.2006,
i.e., today, the learned counsel for the fifth respondent did not file counter and sought adjournment, which is refused. The matter was heard again and is being disposed of by this order.

Learned counsel for the petitioner placed strong reliance on G.O.Ms.No.776, dated 31.12.1990 in support of the only contention that the Gram Panchayat cannot lease out the fishing rights in irrigation channels and drains. He placed strong reliance on the Judgment of Division Bench of this Court in **Vaddavalli Fishermen Cooperative Society Limited v Rayidi Krishna Kumari**. The learned Assistant Government Pleader for Fisheries Department appearing for respondents 1 to 4, who supports the case of the petitioner, submits that as per the Rules framed under Indian Fisheries Act, 1897, (Fisheries Act, for brevity) all the fishing rights in irrigation channels and irrigation drains are controlled by the Assistant Inspector of Fisheries designated as Fisheries Officer and Assistant Director of Fisheries. He submits that the irrigation channels/drains situated in the Gram Panchayat area form part of major irrigation work and therefore fifth respondent has no power or authority to lease out the fishing rights.

The fifth respondent places strong reliance on Section 80 of the Act and submits that G.O.Ms.No.776, dated 31.12.1990, has no application and that under Sections 56 and 80 of the Act, it is only the Gram Panchayat who can lease out the fishing rights in the irrigation channels which form part of the water bodies vesting in the Gram Panchayat. For this, reliance is placed on the decision of the learned single Judge of this Court Judge in **Ipur Gram Panchayat v Government of Andhra Pradesh**.

In the background of the case and having regard to the rival contentions, the point that would fall for consideration is whether in the statutory dispensation under the Act, the Gram Panchayat is competent to lease out Upputeru irrigation channels/drains within the Gram Panchayat limits.

Section 56 of the Act deals with Maintenance of irrigation works, execution of kudimaramat etc. Under sub-section (1)(b), subject to such restriction and control as may be prescribed, the fishery rights in minor irrigation tanks shall vest in the Gram

Panchayat. Under sub-section (1)(a) of Section 56 of the Act, the Government may transfer the protection and maintenance of any village irrigation work, the regulation of irrigation or distribution of water from any irrigation work to a Gram Panchayat subject to the conditions as may be prescribed while transferring to Gram Panchayat. Section 56 of the Act, nowhere vests the absolute powers in the Gram Panchayat in respect of all water bodies, all major and minor irrigation works in absolute terms. The only area where Gram Panchayat can exercise its right is minor irrigation tanks subject to conditions that may be prescribed. Section 80 of the Act deals with vesting of water works in Gram Panchayat. It is to the effect that all public water-courses, springs, reservoirs, tanks, cisterns and other water works existing at the commencement of the Act shall vest in the Gram Panchayat but as per the proviso to Section 80(1) of the Act, any work connected with the work of irrigation does not vest in Gram Panchayat. The expression 'minor irrigation tanks' and 'irrigation work' used in Section 56(1) of the Act are not defined, though the term 'water-course' is defined in Section 2(43) of the Act as to include any river, stream or channel, whether natural or artificial.

On a true construction, it is reasonable to interpret that all water-courses like rivers, streams, irrigation channels, drains vest in the Gram Panchayat under Section 80(1) of the Act. But, if such water-courses are connected with the work of irrigation, Gram Panchayat has no power over such water bodies. For instance, at the commencement of the Act, a water body in the Gram Panchayat may vest in it, but if such water body is used as a balancing reservoir or a storage reservoir in connection with the irrigation work, the Gram Panchayat would be divested of its control over such water bodies. Sub-section (3) of Section 80 of the Act empowers the Government to define or limit the extent of control by the Gram Panchayat or assume for itself the administration of any public source of water supply after consulting the Gram Panchayat. Here, a reference may also be made to Section 81 of the Act, which empowers the Gram Panchayat to regulate or prohibit certain activities in any water- course situated in the Gram Panchayat area. Therefore, when it comes to leasing out fishing rights in any water-course, the powers of Gram Panchayat are subjected to Sections 56 and 80 of the Act, whereas when it comes to prohibiting certain activities, the Gram Panchayat may do so in any water-course or part thereof in the interest of public health.

Before considering the effect of the Government policy as revealed in G.O.Ms.No.776, Food and Agriculture (Fish.II) Department, dated 31.12.1990, it is necessary to refer the Fisheries Act and the Rules made thereunder by the State Government. The Act is intended to prohibit the use of dynamite and poison in all waters, to empower the State Government to make Rules to regulate fishing operations in selected streams or other waters, which are the properties of the Government, to prohibit or regulate the use of various instruments and paraphernalia of fishing and to confer on persons, powers to arrest the offenders. Section 6 of the Fisheries Act thereof empowers the State Government to make Rules *inter alia* prohibiting or regulating the method and manner of fishing in such waters and if so consented even in private waters. In exercise of the powers under Section 6 of the Fisheries Act, the State Government promulgated Rules to regulate and control

fishing in new waters/Kolleru lake. As per Rule 1, no person shall fish in certain specified waters, namely, Kolleru lake included in Revenud Taluks of Eluru, Bhimavaram in the Districts of West Godavari and Kaikaluru taluk of Krishna District and Upputeru connecting Kolleru lake with Bay of Bengal including creeks, arms, branches, tributaries and all sections of the river including reserve forest areas through which they flow. Such prohibition is to be enforced during the period mentioned thereunder with reference to the tackle and the period of prohibition. A person intending to fish is required to obtain a licence but any operation to catch fish of less than 8" is prohibited. Rules 6 and 7 read as under.

> **Rule 6**: (a) Fisheries Officer (not below the rank of an Assistant Inspector of Fisheries) may seize any craft and Tackle with which the breach of Rules 1, 2 and 3 are committed and the fish caught with for production before a Magistrate and to the disposal of the fish by sale of purification is teered to production before the Magistrate.
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> (b) A Magistrate may while convicting any person for the breach of any of the Rules 1, 2 and 3 order the forfeiture of the notes, trapes, fixed engines or any other contrivance by which such breach was committed and also order for the payment of the licence fees prescribed in Schedule – "B".
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> **Rule 7**: No person shall fish in the waters known as Jadas and Gundams which shall be notified by the Assistant Director of Fisheries, Eluru whenever necessary on the basis of formations in the area mentioned in Schedule, unless he obtains a licence for such fishing from the Fisheries Department.

The two Rules extracted above as well as Rule 9 of the Rules would show that it is only the Assistant Director of Fisheries, Eluru, or Fisheries Officer (not below the rank of Assistant Inspector of Fisheries), who are competent to take deterrent action against any contravention and Panchayat has no say with regard to any irrigation channels of Upputeru connecting Kolleru lake with Bay of Bengal.

After coming into force of A.P.Gram Panchayat Act, 1964, the Government issued G.O.Ms.No.776, dated 31.12.1990. A reading of this would show that prior to 1987, fishing rights in inland water-courses like tanks, reservoirs, irrigation channels, swamps, estuaries, back waters etc., were being leased out to cooperative societies of fishermen and harizans engaged in fishing or to Panchayat Board or local bodies or private individuals for a period of three years. In 1986, the Government appointed Expert Committee to go into all matters relating fisheries. In the meanwhile, Fishermen Cooperative Societies and Welfare Federations submitted representations to the Government for allotment of Kuntas and tanks to such Societies on long lease basis for a period of ten years. The matter was enquired into by the Government and pending finalization of the policy in regard to development of fishing in major reservoirs, Government issued orders permitting the issue of annual licences to individual fisherman in all reservoirs including Godavari and Krishna barrages/reservoirs except Srisailam, Somasila and Sriramsagar reservoirs. After finalizing the policy, the Government reviewed the then existing policy and unveiled

a new policy by G.O.Ms.No.776, dated 31.12.1990. It was ordered to re-transfer all the irrigation tanks under the control of the Panchayat Department to Fisheries Department and directions were issued to lease out fishing rights for a period of three years at a time giving preference to Fishermen Cooperative Societies. Under Rule 2(c) of the Rules, the Department of Fisheries and its officials were entrusted with the job of leasing out the irrigation tanks after taking approval of the District Collector in fixation of rentals.

A reference to the provisions of Panchayat Raj Act, Fisheries Act, the Rules made thereunder and the policy guidelines in G.O.Ms.No.776 would show that Section 80 of the Act does not confer any power on the Gram Panchayat to lease out the fishing rights to an individual or to any society if such water body is included in Schedule I of the Rules framed under Fisheries Act as already noticed. The creeks, arms, branches, tributaries and channels of Upputeru connecting Kolleru lake with Bay of Bengal have to be regulated by the Fisheries Department insofar as fishing rights are concerned. This was considered in **Jalla Sesiah v Moka Venkateswarlu** with reference to Section 85 of A.P.Gram Panchayats Act, 1964 (which is re-engaged as Section 80 in 1994). This Court while holding that the right of the Fisheries Department to control the fishing and issue licences is not in any way empowered by the enactment of Gram Panchayats Act observed as under.

> A perusal of the language of Section 85(1) clearly indicates that all public water-courses, springs, reservoirs, tanks, cisterns, fountains, wells, stand pipes and other water works including those used by the public to such an extent as to give a prescriptive right to their use vest in the Gram Panchayat. Sub-section () of Section 85 does not speak of back waters of the sea or swamps formed by inlets of the sea into the land vesting in the Gram Panchayats. The proviso to sub-section (1) of Section 85 excludes irrigation works from the various properties that would vest in the Gram Panchayat. Sub-section (2) of Section 85 gives the Gram Panchayat fishery rights in any water work vested in it under sub-section (1). … The Indian Fisheries Act 1897 continues to be in force after the Constitution came into force. Art.372 of the Constitution provides for continuance in force of existing laws and their adaptation. This is one such law which continued to be in force by reason of Art.372 of the Constitution. Under 7th Schedule of the Constitution entry 57 of List No.1 deals with fishing and fisheries beyond territorial waters, while entry 21 of List No.2 deals with fisheries. Giving a harmonious interpretation of these two entries we have to understand that entry 21 of the 2nd list confines itself to inland water fisheries and fishing in the territorial waters while entry 57 of list No.1 would extend to fisheries in the high seas and fishing beyond territorial waters.

A Division Bench of this Court in **Vaddavalli Fishermen Cooperative Society Limited** (supra) considered the scope of Section 80 of Panchayat Raj Act and held as under.

> A plain reading of sub-section (1) and the proviso thereunder leads to the inference that any work which is an 'irrigation work' or is connected with such work or any adjacent land appertaining to any such work shall not vest in the Gram Panchayat, consequently, the Gram Panchayat cannot claim any right or control over such irrigation works nor can claim any fishery rights in such irrigation works. … A combined reading of sub-section (1), the

proviso thereunder and sub-section (2) of Section 80 of the Act makes it abundantly clear that the Gram Panchayat has been vested with the fishery rights only in respect of such water-courses, tanks etc., mentioned in sub-section (1) and which have been specifically vested in the Gram Panchayat and no fishery rights have been vested in respect of irrigation works which have been specifically excluded under the proviso. Therefore, the Gram Panchayat, which has no power and control in the irrigation tank in question, which is not vested in it by law, cannot claim any fishery rights in it.

Learned counsel for the fourth respondent placed reliance on the decision of the single Judge in **Ipur Gram Panchayat** (supra). As the Judgment of the Division Bench in **Vaddavalli Fishermen Cooperative Society Limited** (supra) is binding on this Court. As the learned single Judge in **Ipur Gram Panchayat** (supra) did not even refer to the Indian Fisheries Act, it must be held as not binding precedent being a precedent *sub silentio* (see **A-One Granites v State of U.P.,**).

In the result, the writ petition is disposed of and a direction shall issue to respondents 1 to 4 to implement the Fisheries Act and Fisheries Rules framed in G.O.Ms.No.50, dated 08.01.1963 and if they decide to leasing out the fishing rights in any of the creeks, arms, branches, tributaries or channels of Upputeru/Bonteru drain, Jaggappa drain, Komatithippa drain, Etimondi, Perlacheruvu, Vedithippa cheruvu, Kothota Ramalayam cheruvu, Komatithippa cheruvu etc follow the guidelines framed by the Government of A.P., in G.O.Ms.No.776, dated 31.12.1990. There shall be no order as to costs.

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(V.V.S.RAO,J)

16.03.2006.

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By order

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